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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 ZSCAQUINE C. MASERANG,  
11  
12 Plaintiff,

13 v.

14 NANCY A. BERRYHILL, Acting  
15 Commissioner of Social Security,  
16 Defendant.

Case No. 16-cv-2098-BAS-MDD

**ORDER:**

**(1) ADOPTING REPORT AND  
RECOMMENDATION IN ITS  
ENTIRETY AND**

**(2) REMANDING THE CASE TO  
THE ADMINISTRATIVE LAW  
JUDGE FOR FURTHER  
PROCEEDINGS**

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20 On August 18, 2016, Plaintiff Zscaqueline C. Maserang filed a complaint under  
21 Section 405(g) of the Social Security Act, requesting judicial review of Social  
22 Security Administration's final decision denying her application for disability  
23 benefits. (ECF No. 1.)<sup>1</sup> The Court referred this matter to United States Magistrate  
24 Judge Mitchell D. Dembin. Plaintiff moved for summary judgment and Defendant  
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27 <sup>1</sup> On January 23, 2017, Nancy A. Berryhill became the Acting Commissioner of Social  
28 Security. She is therefore substituted as Defendant in this suit for former Acting Commissioner  
Carolyn W. Colvin. *See* Fed. R. Civ. P. 25(d); 20 C.F.R. § 422.210(d) (stating that where an action  
for judicial review of a final decision by the Commissioner is instituted "the person holding the  
Office of the Commissioner shall, in his official capacity, be the proper defendant").

1 cross moved. (ECF Nos. 16, 19). On August 29, 2017, Judge Dembin issued a Report  
2 and Recommendation (“Report” or “R&R”) on Plaintiff’s motion for summary  
3 judgment and Defendant’s cross-motion. Judge Dembin recommended that this  
4 Court remand the case to the Administrative Law Judge (“ALJ”) for further  
5 proceedings due to legal error in the ALJ’s decision. (ECF No. 21 at 15:27–16:2.)  
6 The time for filing objections to the R&R expired on September 12, 2017. (*Id.*  
7 16:6–8). Both parties are represented by counsel, but to date, neither party has filed  
8 any objections.

## 9 **I. ANALYSIS**

10 The Court reviews *de novo* those portions of an R&R to which objections are  
11 made. 28 U.S.C. § 636(b)(1). The Court may “accept, reject, or modify, in whole or  
12 in part, the findings or recommendations made by the magistrate judge.” *Id.* “The  
13 statute makes it clear,” however, “that the district judge must review the magistrate  
14 judge’s findings and recommendations *de novo* if objection is made, but not  
15 otherwise.” *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en  
16 banc) (emphasis in original); *see also* *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219,  
17 1226 (D. Ariz. 2003) (concluding that where no objections were filed, the district  
18 court had no obligation to review the magistrate judge’s report). “Neither the  
19 Constitution nor the statute requires a district judge to review, *de novo*, findings and  
20 recommendations that the parties themselves accept as correct.” *Reyna-Tapia*, 328  
21 F.3d at 1121. This legal rule is well-established in the Ninth Circuit and this district.  
22 *See* *Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir. 2005) (“Of course, *de novo*  
23 review of a[n] R & R is only required when an objection is made to the R & R.”);  
24 *Nelson v. Giurbino*, 395 F. Supp. 2d 946, 949 (S.D. Cal. 2005) (Lorenz, J.) (adopting  
25 report in its entirety without review because neither party filed objections to the  
26 report despite the opportunity to do so); *see also* *Nichols v. Logan*, 355 F. Supp. 2d  
27 1155, 1157 (S.D. Cal. 2004) (Benitez, J.).

28 In this case, the deadline for filing objections was September 12, 2017. (ECF

1 No. 21 at 16:6–8.) However, no objections have been filed, and neither party has  
2 requested additional time to do so. Consequently, the Court may adopt the R&R on  
3 that basis alone. *See Reyna-Tapia*, 328 F.3d at 1121.


4 Nonetheless, having conducted a *de novo* review of the parties' cross-motions  
5 for summary judgment and the magistrate judge's R&R, the Court concludes that  
6 Judge Dembin's reasoning is sound. The R&R is thorough, well-reasoned, and  
7 correctly concludes that the ALJ erroneously applied the presumption of  
8 nondisability in deciding Plaintiff's present application for Social Security benefits.  
9 Therefore, the Court hereby approves and **ADOPTS IN ITS ENTIRETY** the R&R.  
10 *See* 28 U.S.C. § 636(b)(1).

## 11 **II. CONCLUSION & ORDER**

12 Having reviewed the R&R and there being no objections, the Court **ADOPTS**  
13 **IN ITS ENTIRETY** the R&R (ECF No. 21) and **REMANDS** the case to the ALJ  
14 for proceedings consistent with this order. The ALJ is instructed not to apply the  
15 principle of the res judicata presumption of continuing nondisability to resolve  
16 Plaintiff's present application for Social Security disability benefits.

17 **IT IS SO ORDERED.**

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19 **DATED: September 20, 2017**

  
**Hon. Cynthia Bashant**  
**United States District Judge**